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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,895	03/15/2006	Bodo W. Lambertz	DD-XTS-25043	7202
2387 7590 03/17/2009 Olson & Cepuritis, LTD. 20 NORTH WACKER DRIVE 36TH FLOOR CHICAGO, IL 60606				
EXAMINER				
HOEY, ALISSA L				
ART UNIT		PAPER NUMBER		
3765				
MAIL DATE		DELIVERY MODE		
03/17/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/563,895

Applicant(s)

LAMBERTZ, BODO W.

Examiner

Alissa L. Hoey

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/08/09 has been entered.

Claim Objections

2. Claims 12, 13, 14 and 15 are objected to because of the following informalities: it is unclear which "pads" you are referring to with the term "the separate pads", the toe pads or the pads of claim 1? Appropriate correction is required.
3. Claim 16 is objected to because of the following informalities: there is no antecedent basis for "toe pad". Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Shaffer et al. (US 5,092,347).

Shaffer et al. teaches the following:

1. (Currently Amended) A for the use with sports activities, the sock having a shaft and a foot section with a treading area that is padded in the treading area and comprises pads (see figures 1-6) in the inner and outer areas of the balls of the foot (see pad 27 adjacent pad), in the area of the heel (22), as well as in the outer instep (20), and that has intermediate spaces (15) between the pads (figures 5 and 6), and that the pads are made of fabric (column 2, lines 58-68) and are constructed and arranged to optimally adapt to the load profile of the foot (see figures 1-6), and the pads being directed outwardly from the sock and extending from the outer surface of the sock (see figures 1-6).

2. (Previously Presented) A sock as in claim 1, wherein there is a pad on the ball of the foot (27 and larger pad) in the area of the inner and outer ball, the fabric of which is dissimilar in structure to the fabric of the other pads (figures 5 and 6).

3. (Previously Presented) A sock as in Claim 2, wherein there the pad (27 and larger pad) on the ball of the foot is made up of multiple sections (see figure 6, identifiers 27 and larger pad next to pad 27).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 4-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaffer et al.

Shaffer et al. teaches a padded sock as described above in claims 1 and 2. However, Shaffer et al. fails to specifically teach the sickle-shaped toe pad being multiple individual pads that are dissimilar in structure.

In regard to claims 4-6, Shaffer et al. teaches a toe pad (28) located over the user's toes. The toe pad does not detail that it is sickle-shaped.

It would have been obvious to have provided the toe pad(s) to be in any shape as desired, because as long as a pad is provided in the toe region the shape of the pad can be any, as long as, the pad provides protection and comfort to the user's toes.

In regard to claim 7, Shaffer et al. teaches a toe pad (28) as a single pad.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to create the toe pad in multiple individual pads, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Crllichman*, 168 USPQ 177, 179.

In regard to claim 8, it would have been obvious, that creating multiple toe pads out of toe pad (28) would create pads that are dissimilar in structure, since all the toes are of different sizes and would need corresponding sizing for proper protection and comfort.

In regard to claims 9, 10 and 11, it would have been obvious that the pad having different shapes and sizes, supporting different foot parts would also have varying

degrees of firmness depending upon the degree of support needed for a particular foot part.

8. Claims 12-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaffer et al. in view of Lambertz (US 6,286,151).

Shaffer et al. teaches a padded sock as detailed above in claim 1. However, Shaffer et al. fails to teach at least one side climate conduit that leads into at least one of the intermediate spaces on the treading area created between the separate pads.

In regard to claims 12, 13, 14 and 15 Lambertz teaches a sock with at least one side climate conduit is provided that leads into at least one of the intermediate spaces on the treading area created between the separate pads (see figures 1-8).

In regard to claims 16-22, Shaffer et al. and/or Lambertz teach a sock with pads and intermediate spaces as detailed earlier in this office action in the rejection of claim 1, sickle-shaped toe pads as detailed above in the rejection of claims 4-6, at least one side climate conduit as detailed above in the rejection claims 12-15, the pad on the ball being dissimilar in structure to the other pads (see figure 6 of Shaffer), the toe pads made of multiple individual pads as rejected above in claims 7 and the pads having varying degrees of firmness as detailed above in the rejection of claim 11.

It would have been obvious to have provided the sock with pads of Shaffer et al. with the climate conduit of Lambertz, since the sock with pads of Shaffer et al. provided with a climate conduit would provide a sock that not only provides comfort and support to the user's foot, but also provides for comfort and breathability during use.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and can be found cited in PTO-892 form submitted herewith.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30)Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alissa L. Hoey/
Primary Examiner, Art Unit 3765